STANDING COMMITTEE on ADMINISTRATION OF JUSTICE

REPORT ON WHITE PAPER ON LOAN AND TRUST COMPANIES

Fourth Session, Thirty-Second Parliament
32 Elizabeth II

Ontario

LEGISLATIVE ASSEMBLY

May, 1984

The Honourable John M. Turner, M.P.P.
Speaker of the Legislative Assembly

Sir,

We the undersigned Members of the Standing Committee on the Administration of Justice have the honour to submit the attached report.

Al Kolyn, M.P.P.
Chairman

Robert MacQuarrie, Q.C., M.P.P.
Vice-Chairman

* Don Boudria, M.P.P.

Robert Mitchell, M.P.P.

James R. Breithaupt, Q.C., M.P.P.

James A. Renwick, Q.C., M.P.P.

* Michael M. Cassidy, M.P.P.

Michael Spensieri, M.P.P.*

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Ross Stevenson, M.P.P.

Ernie Eves, Q.C. M.P.P.

John R. Williams, Q.C., M.P.P.*

Doug Arnott, Andy Richardson, Franco Carrozza
Clerks of the Committee

Veronica Kalata
Assistant to the Clerk

Albert Nigro and Peggy Mooney
Research Officers

* See Substitution List.

List of Committee Members Appointed on Friday, December 16th, 1983

Mr. D. Boudria

Mr. J. Breithaupt

Mr. M. Cassidy

Mr. E. Eves

Mr. P. Gillies

Mr. V. Kerrio

Mr. A. Kolyn (Chairman)

Mr. B. MacQuarrie

Mr. B. Mitchell (Vice-Chairman)

Mr. J. Renwick

Mr. R. Stevenson

Mr. J. Taylor (Prince Edward-Lennox)

Substitutions for the Week of February 6th, 1984

Mr. P. Reid for Mr. V. Kerrio

Mr. M. Hennessy for Mr. A. Kolyn

Substitutions for the Week of February 13th, 1984

Mr. P. Reid for Mr. V. Kerrio

Mr. M. Hennessy for Mr. A. Kolyn (February 14th only)

Substitutions for the Week of February 20th, 1984

Mr. B. Hodgson for Mr. P. Gillies (February 21st only)

Mr. P. Reid for Mr. V. Kerrio

Mr. N. Villeneuve for Mr. B. Mitchell (February 21st only)

Substitutions for the Week of February 27th, 1984

Mr. T. Grande for Mr. M. Cassidy

Mr. B. Hodgson for Mr. E. Eves

Mr. R. Van Horne for Mr. V. Kerrio

Mr. J. Williams for Mr. R. Stevenson (February 29th only)

List of Committee Members Appointed Monday, April 2nd, 1984

Mr. J. Breithaupt

Mr. S. Cureatz

Mr. M. Elston

Mr. E. Eves

Mr. A. Kolyn (Chairman)

Mr. B. MacQuarrie (Vice-Chairman)

Mr. B. Mitchell

Mr. J. Renwick

Mr. M. Spensieri

Mr. R. Stevenson

Mr. M. Swart

Mr. J. Williams

Substitutions for Thursday, April 5th, 1984

Mr. R. Treleaven for Mr. S. Cureatz

Mr. A. McLean for Mr. B. Mitchell

Mr. R. Piché for Mr. R. Stevenson

Substitution for Wednesday, April 11th, 1984

Mr. E. Havrot for Mr. B. Mitchell

Substitutions for Thursday, April 12th, 1984

Mr. J. Lane for Mr. B. Mitchell

Mr. M. Cassidy for Mr. M. Swart

Substitutions for Wednesday, April 18th, 1984

Mr. R. Treleaven for Mr. B. MacQuarrie

Mr. D. Boudria for Mr. M. Spensieri

Mr. M. Cassidy for Mr. M. Swart

Substitutions for Wednesday, April 25th, 1984

Mr. Runciman for Mr. B. MacQuarrie

Mr. Boudria for Mr. M. Spensieri

Mr. M. Cassidy for Mr. M. Swart

On April 27th, 1984, by Motion of the Legislature, there was a Substitution on the Membership of the Committee

Mr. D. Boudria for Mr. M. Elston

Substitutions for Wednesday, May 2nd, 1984

Mr. M. Cassidy for Mr. M. Swart

Mr. M. Kells for Mr. B. Mitchell

Mr. J. Pollock for Mr. E. Eves

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Appendix 1 List of Submissions to the Committee and the White Paper Proposals Which Each Addressed

Appendix 2 Organization of Financial Institutions Division as Suggested by White Paper November 1983

Appendix 3 List of Exhibits

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Introduction

Pursuant to Orders of the House dated December 16, 1983, the Standing Committee on Administration of Justice considered the White Paper on Proposals for Revision of the Loan and Trust Corporation Legislation and Administration in Ontario, prepared by the Ministry of Consumer and Commercial Relations.

On motion by Mr. Wells, seconded by Mr. Ramsay,

> ORDERED, That the following standing committees be continued and authorized to sit during the Recess between the Third and Fourth Sessions of this Parliament in accordance with the schedule of meeting dates agreed to by the three Party Whips and tabled with the Clerk, with power to send for persons, paper and things, as provided in section 35 of the Legislative Assembly Act, and with power to examine and inquire into the following matters:
>
> Standing Committee on Administration of Justice to consider and report on Sessional Paper Number 117 respecting loan and trust matters.

The Committee wishes it to be recognized that the scope of its deliberations was severely limited by time constraints. In addition, the Committee itself imposed limitations on its discussions with respect to the events of just over a year ago which are currently under police investigation or the subject of civil litigation. It should also be stressed that the Committee, in commenting on the recommendations in the White Paper, is not in any way commenting, favourably or unfavourably, upon the performance of the Ministry of Consumer and Commercial Relations in response to those events.

The Committee held a week of Ministry briefings and two weeks of public hearings in February. Following the conclusion of the public hearings, the Committee held a week of deliberations in order to formulate this report. During deliberations the Committee considered arguments made in the oral presentations to the Committee as well as in the 18 written submissions from organizations and individuals who did not wish to make an oral presentation. (Organizations and individuals who submitted briefs are listed in Appendix 1.)

Thanks go to those organizations, companies and individuals which took time to present their views on the White Paper to the Committee. We are also grateful to the Minister of Consumer and Commercial Relations, Dr. Robert Elgie, for his presence and cooperation throughout most of the proceedings, and to the Deputy Minister, Donald Crosbie, and the Registrar of Loan and Trust Corporations, Murray Thompson, who briefed the Committee on the White Paper, attended each Committee hearing and responded to the best of their ability to the Committee's many questions. The Committee was ably assisted in its task by its Clerks, Andrew Richardson, Douglas Arnott and Franco Carrozza, and by Peggy Mooney and Albert Nigro, Research Officers with the Legislative Research Service who drafted this report in accordance with the Committee's instructions.

The structure of this report follows closely the structure of the White Paper itself, and each section of the White Paper has a matching chapter in this report. Each chapter has a brief introduction, followed by a summary of the Committee's discussions on each of the White Paper's recommendations. These recommendations are numbered in the same manner as in the White Paper (where they are listed on pages 8-12) and are enclosed in boxes to distinguish them from the Committee's own remarks.

There are few recommendations in the White Paper with which the Committee completely disagrees, but approval of many recommendations is tempered by a general concern that they provide for too much regulation and grant too much discretionary authority to the Registrar. This issue of regulation clearly troubled the Committee, although, following a great deal of discussion, the majority of the Committee concurred with the White Paper in rejecting controls on ownership in favour of closer regulatory controls. While the Committee recognizes that the need to protect depositors and investors necessitates overall government control and supervision of the financial services industry, we nevertheless feel that this consideration must be balanced with the recognition that these institutions are operated by the private sector and scope must be left with management to exercise its own judgement.

There is a general acceptance in the White Paper of the principle that professionals must become much more aware of the importance of their responsibilities, and this theme was taken up by the Committee in much of its deliberations. In particular, the special nature of the trust-trustee relationship, of which boards of directors and professionals should be constantly aware, was stressed by the Committee. We are firmly opposed to any suggestion that the nature of this relationship should be changed.

Finally, it should be noted that there are opinions and recommendations in this report with which individual members of the Committee may disagree. We have compromised in order to present a report that each member can support, but no single member of the Committee should be held solely responsible for any one of the views expressed in the report.

PART B

ADMINISTRATION

Introduction

Throughout much of the discussion on this section it was felt that the subject under review was more an internal organizational matter than an issue for legislative concern, and thus the Committee did not find it appropriate to make comments on every recommendation.

1. In the future, there should be a more active approach to regulating loan and trust corporations in Ontario in order to anticipate problems. (p. 8)

Discussion

The organization chart in Appendix II incorporates the proposed changes to the Financial Institutions Division of the Ministry of Consumer and Commercial Relations; it is by means of this reorganization that the Ministry is planning to implement this recommendation.

The Committee feels that it is in no position to support or oppose the implication of this recommendation. The internal organization of the Ministry is an internal matter and best dealt with by the Ministry and Management Board. However, the Committee does wish to note that whatever organizational structure is chosen it should complement and be consistent with the new legislation.

2. It is proposed that a new position of Commissioner of Financial Institutions be created, reporting directly to the Minister, to be filled by a senior person from the professional community with a primary responsibility to:

   a) provide general and specific policy advice to the Minister on matters affecting provincially regulated financial institutions, including loan and trust corporations, insurance companies and credit unions;

   b) act as watch dog for the public interest by maintaining close contact with public concerns and having the power to hold hearings and review issues affecting the loan and trust industry; and

   c) hear appeals from decisions of the Registrar.

3. An independent Financial Advisory Committee is also proposed consisting of experienced persons in the financial and business community which would serve as advisor to the Commissioner, with the capability of assisting in the appellate functions. (p. 8)

Discussion

The Committee supports the goals of creating an independent appellate body and of creating a means by which the Minister can be kept in touch with the financial community. However, we have serious reservations about the manner in which these new positions are to be created.

A major concern of the Committee is that the White Paper is proposing to create an office with a great deal of potential authority, yet without clear jurisdiction and with extremely broad powers. It is therefore recommended that, if the Commissioner is going to have powers under the Public Inquiries Act, it be made very clear what his responsibilities are, how they are to be

carried out, and under what authority. The Committee notes, for example, that the Securities Commission, acting under the authority granted by the Securities Act, is provided with well-defined powers of investigation.

The relationship between the proposed Commissioner of Financial Institutions and the Advisory Committee is also confusing. The nature of the Advisory Committee seems to be entirely dependent upon the personality of the Financial Commissioner; unless the latter chooses to delegate tasks to the Advisory Committee, there appears to be no role defined for it. We recommend instead that the Financial Commissioner be chairman of the Committee, which should serve in an advisory capacity to the Minister rather than to the Financial Commissioner.

During our discussions, concern was also expressed about the apparent conflict between the advisory and appellate functions, and we feel that conflicts of interest could occur. While the ideal situation would be to have a totally independent appellate body, we suggest as an alternative that the Financial Commissioner and some members of the Advisory Committee be designated as appeal commissioners, in order that the appeal function be separate and distinct from their roles on the Advisory Committee. This would be consistent with our earlier recommendation that the Advisory Committee advise the Minister and not the Commissioner.

The Committee strongly supports the White Paper's proposal that:

> The Commissioner should be a senior, respected person in the financial, legal or accounting community appointed for a fixed period by order-in-council. (p. 13)

It is to be hoped that this type of revolving-door appointment of a person active in the financial community would provide the desired, ongoing connection between the Minister and the financial services' sector. The Committee noted, in passing, that a blind trust should be set up for the Commissioner in order to avoid conflict of interest charges.

We wish to stress finally, that it should be absolutely clear that, in proper parliamentary fashion, the Financial Commissioner will be responsible through the Minister to the Legislative Assembly. The doctrine of ministerial responsibility is central to a parliamentary system of government and it is the Committee's view that none of the recommendations in the White Paper should be interpreted as derogating in any way from this principle.

With respect to the Advisory Committee, we feel that the professional bodies should not only be invited to nominate members, but should also be made to recognize both that they have some direct responsibility in these matters, and that there have been problems in the past related to the conflict of interest rules of the profession. This desire to stress responsibility on the part of professional bodies is consistent with the tone of the Committee's discussions on Section E of the White Paper.

4. The present position of Executive Director of Financial Institutions should be replaced by an Assistant Deputy Minister with responsibility for the administration of all branches within the ministry regulating financial institutions in Ontario. (p. 8)

6. The position of Assistant Deputy Minister should be separated from the positions of Registrar of loan and trust corporations and Superintendent of Insurance. (p. 8)

Discussion

The Committee observed that these organizational changes have already been implemented; it is not within the Committee's mandate to comment upon internal Ministry organization.

5. The Registrar of loan and trust corporations should be given much broader and more far-reaching regulatory powers. (p. 8)

Discussion

The tone of this recommendation is reflected throughout the White Paper, and the Committee expresses its thoughts in more detail in later sections of this report. It should be noted at this juncture, however, that the Committee holds strong reservations about the scope of discretionary powers granted to the Registrar.

> 7. A separate investigative unit reporting directly to the Assistant Deputy Minister should be established with special capability to investigate irregularities and problems in all financial institutions regulated within the ministry. (p. 8)

Discussion

The Committee notes that the establishment of this proposed investigative unit is currently under review by Management Board; since the Committee does not have immediate control over this process, we do not wish to comment further save to concur with the 1975 Select Committee on Company Law Report's recommendation that:

> (g) the Government of Ontario should act favourably and promptly in regard to any request received from the Registrar for additional examination staff: (para 17.09 (g), p. 124).

PART C

CARRYING ON BUSINESS IN ONTARIO

Introduction

General concern was expressed both by witnesses before the Committee and by members of the Committee itself over the amount of discretionary authority being afforded to government officials to intervene in the internal workings of a loan or trust company. While this trend was apparent in most sections of the White Paper, it was particularly evident in the recommendations found in the Carrying on Business in Ontario section. The Committee recognizes that the need to protect depositors and investors necessitates overall government control and supervision of the financial services industry. Nevertheless, this consideration must be balanced with the recognition that these institutions are operated by the private sector. Management must be left with the scope to exercise its own judgement and take the concomitant responsibility for its decisions.

Three themes emerged during the Committee's discussion of this section of the White Paper: (1) there is a need to vest clear responsibility and authority with the boards of directors and management of regulated companies, while leaving overriding supervisory authority with the Registrar; (2) the questions of whether to permit incorporation of a company, whether to object to a merger, acquisition or sale of a corporation, whether to license an extra-provincial company and whether to approve of an existing company during its annual review must be seen as part of the single issue of whether a company should be permitted to operate in Ontario and should all be approached in a consistent fashion; and (3) the regulators must be fully apprised of the entire corporate structure in which the regulated company is a component.

1. All loan and trust corporations carrying on business in Ontario wherever incorporated, should be subject to essentially the same rules, standards and criteria. (p. 8)

15. Loan and trust corporations incorporated outside the province but carrying on business within the province should be closely regulated in the same manner as Ontario loan and trust corporations. The Registrar should have the power to impose limitations on their registry and the power to control their activities according to rules based on competence, responsibility and fitness. (p. 9)

Discussion

The Committee agrees that the new statute has to be very clear in strongly asserting provincial jurisdiction with respect to the area of activity of loan and trust corporations. The Committee thus confirmed and strengthened the position taken by the White Paper and by the 1975 Select Committee on Company Law Report, which had recommended that the requirements for registration of federal and extra-provincial companies should conform as closely as possible to the requirements for incorporating a new loan and trust company in Ontario.

It was argued that once Ontario jurisdiction in this area is established, it is irrelevant how the Ministry exercises its control. It is of no concern to the Committee if, for convenience, Ontario looks to the incorporating jurisdiction to exercise its primary control and enforcement powers; however, the Committee is very firm in its view that, by accepting statements from other regulators, the Ministry is not escaping its proper responsibility for anything that might go wrong. It was noted that the current Act allows for the Registrar to accept reports from other jurisdictions.

In stating this general principle, however, the Committee realized the constitutional implications of such a policy and addressed the question of whether or not Ontario could refuse to license a federally-incorporated company which did not meet provincial requirements. It was agreed that in such a case provincial jurisdiction over the matter should be strongly asserted, and that if the federal government wishes to challenge provincial authority, the issue should be decided by the courts.

2. The granting of letters patent incorporating a loan or trust corporation should remain discretionary, but the criteria to be satisfied by applicants for incorporation should be stricter and more clearly defined. (p. 8)

6. Persons proposing to acquire or merge with an existing loan or trust corporation in Ontario should satisfy the same standards and requirements as those who incorporate a new corporation. (p. 9)

Discussion

The Committee agrees in general terms with these recommendations and also observed that the recommendations of the 1975 Select Committee Report in this area were relevant and timely, and consistent with those in the White Paper. (The Select Committee Report set out four criteria to be met before incorporation: the fitness of the proposed management to manage a loan or trust company; the assurance that the persons who are providing the capital are responsible; the assurance that a financially viable operation is proposed; and the readiness of the promoters to offer a broad range of loan or trust services to the public.) (p. 20)

In the Committee's view, the principle that incorporation of a trust company be discretionary and not as of right is a fundamental one. It feels that discretionary incorporation of loan and trust companies is more effective in regulating the industry than the alternative which would permit incorporation as a matter of right, and then regulate subsequently through the use of mandatory disclosure.

The Committee's discussion centred on the sensitive and difficult problem of striking a balance between over-regulation of the company and under-protection of the depositor. In the Committee's view, the balance is best found by protecting the depositors through the CDIC (as is presently the case), and by providing a "level playing-field" for the industry. Everything else should properly be the responsibility of the board of directors on behalf of the shareholders.

3. Corporations starting a business in Ontario should begin with the minimum powers of a loan corporation and should be entitled to apply for additional powers as they demonstrate their commitment and capability to fulfill them. The estate, trust and agency powers of a full service trust company should only be granted to those corporations with demonstrated capability in those areas and the necessary financial resources and other qualifications. (p. 8)

Discussion

The Committee supports the thrust of this recommendation which favours a step-by-step approach to the development of loan and trust companies in Ontario.

Implementation of this recommendation would result in new companies being basically financial intermediaries, only taking deposits and issuing debentures. They would not be permitted to use the word "trust" in their corporate names, and depositors would be classed as ordinary creditors, rather than trust beneficiaries as are trust company customers.

The Committee noted that only 9 of the 57 trust companies licensed to do business in Ontario in 1981 offered full estate, trust and agency (ETA) services, and that indeed not all of the remainder wish to offer these services. The Committee discussed the problem of how to encourage existing trust companies in Ontario to offer ETA services. The word "trust" is a valuable business asset and the Committee agrees with the linking of its use to the offering of the full range of ETA services, since this should encourage a greater accessibility to ETA services by all residents of the Province. If this method of increasing the availability of ETA services proves ineffective, the Committee feels that the government should consider legislative action.

4. The minimum capital for the incorporation of a loan corporation should be increased to $2 million and the minimum capital for a full service trust company should be $10 million. Existing corporations which do not meet the financial criteria would be given time to do so. (p. 9)

Discussion

The Committee agreed that the minimum capital for the incorporation of a loan corporation should be increased to $2 million, this being consistent, after inflation is taken into account, with the increase proposed in the 1975 Select Committee Report. However, members had serious reservations about the $10 million minimum proposed for full-service trust companies.

The Committee is not convinced of the need for such a high minimum capital requirement for a trust company, nor of the extent to which it would really act as protection for the public. In addition, there was concern that smaller, "regional" trust companies would find it a financial strain to increase their capital so substantially; in fact, such companies might not have a large enough market to service the borrowing ratio which would be created by that much capital. Rather than give the Registrar discretionary powers to exempt companies from the $10 million requirement, and risk the problems entailed in the exercise of such discretion, the Committee feels, and the Ministry agrees, that removal of the $10 million minimum is more appropriate.

This recommendation must be viewed in the context of the Committee's support for the White Paper proposal of a step-by-step progression from initial incorporation as a loan company to becoming a full-service trust company.

The Committee also considered the nature of eligible capital, and noted the potential problem which could be caused by a future reduction in capital, if callable shares are included in the original capital requirements.

5. The powers and functions of every loan or trust corporation carrying on business in Ontario should be reviewed annually. (p. 9)

Discussion

The Committee recognizes the need for, and strongly endorses the principle of, an annual review of all trust and loan companies carrying on business in Ontario. Such a review can be seen as one component of the regulatory scheme supported by the Committee: companies are to be incorporated by the discretionary use of letters patent; mergers, amalgamations and purchases of existing companies are to be subject to scrutiny; and corporations incorporated in other jurisdictions applying to be licensed in Ontario are expected to satisfy the same criteria as an Ontario incorporated company.

Viewed in this context, the question of what is to be annually reviewed arises. Clearly there are underlying standards that the regulators must ensure are met by all companies operating in Ontario. In the case of the annual inspection, the competence and character of the management and the company's plan for operating or expanding its business must be included in the review. It is expected that the Ministry will develop criteria that are consistent with these concerns and with the overall theme of the White Paper.

The Committee also noted that in other contexts analogous reviews by government officials are staggered throughout the year. It is the view of the Committee that from the perspective of administrative efficiency, it would be desirable to so stagger the annual reviews of trust and loan companies. The Ministry is urged to develop a scheme that would facilitate this approach, although it is recognized that each company must be reviewed annually and that the regulators themselves are to make an annual report on these reviews.

7. The Registrar should be given the power to require subsidiaries of loan and trust corporations to cease unacceptable business or financial practices. (p. 9)

Discussion

It is imperative that the legislation ensures that the Registrar and other Ministry officials are informed of the details of the entire corporate structure of which the regulated company is a part. Government officials must be fully cognizant of the nature of the holding company, the subsidiary corporation and the (directly or indirectly) affiliated or sister corporations. There should be parallel regulations governing all of these related corporations, as a loan or trust company should not be permitted to do indirectly what it is prohibited from doing directly.

The disclosure principle is central to the Committee's view of controlling related companies -- the regulators must have complete knowledge of the total corporate structure. There are advantages to employing the disclosure approach: (1) the principle places a positive obligation on the management and directors of a regulated company to provide full information to Ministry officials; and (2) the Ministry itself regularly receives and reviews such information (rather than receiving it through a special investigation).

As discussed earlier, however, the Committee has serious reservations over leaving too much discretion in the hands of government officials. Specifically, the broad wording of this recommendation causes concern. It is felt that in most situations the Registrar can adequately control the relationship between a regulated company and its subsidiary by use of such conventional techniques as reducing the company's asset base or by lowering its borrowing multiple should transactions between the parent and subsidiary place depositors' funds at risk. Moreover, it is expected that the new Act will, as does the existing statute, limit the type of subsidiary that the regulated company can own.

These form relatively objective standards which will avoid uncertainty in operating in Ontario. There are extraordinary circumstances, however, which may require that discretionary authority be vested with Ministry officials.

8. The maximum investment by a loan or trust corporation in another corporation, other than a subsidiary, should be reduced from 20 per cent to 10 per cent, making it less likely that a number of corporations, acting secretly and in concert, can avoid the provisions of the Act. (p. 9)

9. The Registrar should have the power to designate corporations in which a loan or trust corporation has invested as an affiliate, with special rules applicable to all transactions with such affiliates. (p. 9)

Discussion

The Committee is not satisfied that reducing investments in a subsidiary from 20 percent to 10 percent would be an effective method of curbing or preventing abuses in the financial services industry. There is no evidence to suggest that the recently revealed abuses would have been avoided had a 10 percent investment rule been in place. Rather, it is the view of the Committee that the judicious use of the disclosure principle, discussed above, is more effective than artificially reducing levels of investment in affiliated corporations.

The Committee recommends that a regulated company should be allowed to continue to invest in up to 20 percent of another corporation. When the investment exceeds 10 percent of the shares of another company, however, the Registrar must be informed of the nature of the investment. Such systematic disclosure permits the Ministry to regularly monitor the activities between the regulated company and its affiliate; the Registrar would be permitted to reduce the asset value of an investment in an affiliate or to eliminate the

investment from the borrowing base. In the Committee's view, the same regulation would not, however, be necessary in otherwise authorized investments in the preferred shares of another corporation.

The Committee did agree that the Registrar should have the power to designate corporations in which a regulated company has invested as an affiliate and that special rules should be applicable to transactions with affiliates. Support for this recommendation must, however, be viewed in the context of the Committee's underlying reservations over leaving too much discretion with Ministry officials. It is expected that the special rules regulating the transactions between a loan or trust company and an affiliate will be set out with clarity and in some detail in the new Act and regulations.

It is acknowledged that the Committee's views on the maximum investment in an affiliated corporation are inconsistent with the 10 percent rule set out in the Federal Proposals on the Revision and Consolidation of the Trust Companies Act and the Loan Companies Act. These Proposals have been shelved and it is not clear when the federal legislation will finally be promulgated. Ontario must be prepared to act in concert with other jurisdictions, but our Act should reflect the concerns and needs of the people of Ontario and the drafting of legislation should not be delayed merely in order to attempt to develop legislation which is uniform across the country.

> 10. The power of the Registrar to regulate and control transactions between a loan and trust corporation and its holding company should be increased and more closely controlled. (p. 9)

Discussion

The Committee understands this recommendation as meaning that the Registrar would have the authority to regulate and control transactions between regulated companies and their holding companies and that this power

should be increased to control such transactions more closely. This knowledge should include full disclosure of the existence of not only a holding company but also complete information on the entire corporate structure in which the regulated company is located. This principle applies equally to information on holding companies as it does to knowledge of subsidiaries and affiliated corporations. Similarly, the concerns of the Committee over placing too much discretionary authority in the hands of Ministry officials apply equally to the regulation of holding companies as to the management of subsidiaries and affiliates. Furthermore, the language used in the recommendation is quite vague, possibly leading to a great deal of power being given to the Registrar to intervene into the workings of the industry without explicitly stating the criteria on which the intervention will be based.

It is acknowledged that some of the misgivings of the Committee over vague criteria and excessive discretion may be alleviated by drafting clear and explicit legislation. Nevertheless, the Committee reiterates its view that transactions between related companies must give rise to prompt and timely notice to Ministry officials; in order to control transactions, the Ministry must first be aware of them. Moreover, regular timely disclosure permits the Ministry to design an orderly reviewing scheme, while placing an obligation on the regulated company and its parent to provide complete information on their transactions with one another. As with affiliates, in appropriate circumstances Ministry officials could use this information to reduce the company's borrowing multiple or to reduce its asset base; but only in extraordinary circumstances should officials be permitted to intervene directly in dealings between a holding company and a loan and trust company, and then only when depositors' funds are at risk.

11. New restrictions should be introduced affecting the issuance of shares of a loan or trust corporation for other than cash and the consideration that may be received for such shares. (p. 9)

Discussion

The text of the White Paper provides further details on the restrictions on issuing shares of a loan or trust company for other than cash:

> . . .no shares, common or preference, should be issued other than for cash except under extraordinary circumstances. In extraordinary circumstances, shares may be issued where the consideration is for independently appraised physical assets at fair market value, provided the Registrar's prior approval has been obtained. (p. 19)

The Committee is of the view that the issuance of shares for other than cash must be the responsibility of the Board and not the responsibility of the Registrar. In the Committee's opinion the Board of Directors must have the onus of valuing property that is accepted (directly or indirectly) in lieu of cash for shares, and the Directors must specifically pass a resolution on the valuation of property where shares are issued for other than cash. This information would have to be conveyed in a prompt and timely fashion to the Registrar who would maintain overriding control, as discussed below. The Committee acknowledges that this approach will require carefully drafted legislation in order to prevent circumvention of the intent of the statute.

The Committee agrees the Registrar must be informed of any transaction where shares are issued for property rather than cash. Accordingly, the Registrar could oversee the situation by disallowing the transaction or by regulating the borrowing multiple and borrowing base of the loan or trust company. However, the Committee strongly feels that the scheme of the Act must unequivocally place the responsibility for issuance of such shares on the Board of Directors, subject to this supervisory control exercised by the Registrar. It would be appropriate in this situation to permit a company to seek an advance ruling from the Registrar on a proposed share transaction for other than cash, but otherwise the onus must rest with the Board.

12. The Registrar should have authority to require specific transactions to be submitted to the board of directors of a loan or trust corporation or to require the loan or trust corporation to make the transaction public. (p. 9)

Discussion

It is the Committee's view that this recommendation is consistent with the approach advocated under the previous recommendation. During the Committee's deliberations a number of themes emerged. Among these was the need to place clear responsibility on the boards of directors of regulated companies. This responsibility would not only provide authority for the Board to demand certain information from the management of the company, but it would also statutorily enshrine the duties and obligations of the Directors themselves. Insofar as this recommendation is consistent with this view of the Act, the Committee strongly endorses it.

13. All loan and trust corporations carrying on business in Ontario would register initially and renew their registration annually. No registration should be granted or renewed unless the corporation is a member in good standing of the Canada Deposit Insurance Corporation. (p. 9)

14. Borrowing and investment powers should be controlled by the Registrar at the time of registration and annual renewal, with increased borrowing capability and investment powers being dependent upon demonstrated capability and resources. (p. 9)

Discussion

The Committee has previously supported the notion of an annual review and the need to ensure that the criteria used for such a review be consistent with, and part of, the standards used in determining whether to issue letters patent for incorporation and whether to license an extra-provincial company. However, the fact of being insured by the CDIC should not exempt the Ministry from exercising its proper supervisory role. In other regards the Committee supports the general thrust of these two recommendations, although it has some reservations on the wording of the recommendations. There is a tendency in this, and other sections of the White Paper, to vest a great deal of discretion in the Registrar. It is the view of the Committee that while the Registrar and other Ministry officials must be charged with supervising the operation of the industry, this function must be based on objective criteria that are clearly delineated in the Act and regulations. Moreover, the Committee agrees that while the Registrar and other Ministry officials must exercise an overseeing function, civil servants should not be permitted to unduly interfere in the internal affairs of regulated companies. Such matters are the prerogative of the board of directors and of the management, and the Act must recognize this and must ensure that these groups can be held accountable for their actions.

16. The Registrar should have the power to require corporations to take remedial action where required, including the power to require increases in capital, cessation of investments and reduction in borrowing capacity. (p. 10)

Discussion

Subject to the underlying concern of the Committee over leaving too much discretion in the hands of the Registrar, the Committee endorses this recommendation as providing a fundamental tool for the enforcement of the

Act. It is the Committee's view that this recommendation recognizes the authority presently given to the Registrar under the existing Act and allows the Ministry to further refine this necessary tool.

The Committee is, however, concerned that the authority given to the Registrar could be construed as decreasing the responsibility to the Legislature of the Lieutenant Governor in Council generally, and the Minister specifically. The Committee is somewhat reassured by the language in the text of the White Paper where it is said that none of the recommended appeal procedures should be seen as modifying the final authority of the Lieutenant Governor in Council (at p. 38).

PART D

LIMITATIONS ON OWNERSHIP AND TRANSFERS OF SHARES

Introduction

After a great deal of debate, the Committee decided to concur with the recommendation in this section against limiting ownership in loan or trust companies. Having agreed to this, the Committee viewed the remaining recommendations in this division as forming part of the overall regulatory scheme that is designed to prevent abuse by a majority or controlling shareholder, or alternatively, abuse by firmly entrenched management. In the Committee's view there is no simple answer to the ownership question. However, while concurring with the White Paper's position on ownership, we emphasize the need for the implementation of an entire regulatory system designed to prevent manipulation by an unscrupulous owner or manager.

> 1. The present provisions of the Act introduced in 1982 requiring the consent of the Registrar for the transfer of shares of Ontario loan and trust corporations, and their holding corporations, where the acquirer owns or controls 10 per cent or more of any class of shares, should be extended to apply to all loan and trust corporations carrying on business in Ontario. The Registrar should be given the power to cancel or modify the registration to do business in the event any transfer is made affecting such a corporation contrary to the provisions of the Act, or where the Registrar is denied information from any such corporation respecting beneficial ownership. (p. 10)

Discussion

The Committee endorses this proposal, with a single caveat. The Canadian Depository for Securities Ltd. (CDS) recommended that an exception be made in the Act to permit registration of share transfers to be made into the

nominee name for CDS without the consent of the Registrar, since CDS does not have any beneficial interest in the securities. The Committee is sympathetic to this submission, and expects that the Ministry will review the matter with CDS in order to ensure that this Company will be able to continue its business notwithstanding the supervisory role of the Registrar in regulating the transfer of shares.

The acceptance of this recommendation by the Committee must be seen in the context of our position on the question of ownership. It is recognized that there are inherent dangers in permitting a loan or trust company to be controlled by a single shareholder. Nevertheless, as fully discussed below, this Committee has decided to support the recommendation that imposes no absolute limitation on ownership of a loan and trust company. Our support, therefore, of the present recommendation, requiring consent for the transfer of shares, can be viewed as our supporting one component of a regulatory scheme that is intended to counterbalance the danger posed by an unscrupulous controlling shareholder.

> 2. The criteria for the Registrar giving or withholding his consent to transfer shares should be based on those criteria applicable to the incorporation of a loan or trust corporation in Ontario. (p. 10)

Discussion

In our discussion on granting incorporation to an applicant, licensing extra-provincial corporations and approving operating companies on their annual review, the Committee stressed that these questions were all part of the larger issue of whether a company should be permitted to operate in Ontario. The transfer of a major block of shares is similarly part of the same issue, and the Committee strongly endorses approaching such a transfer using criteria based on those applicable to the incorporation of an Ontario company.

3. An appeal to the Lieutenant Governor in Council from the Registrar's decision should continue, but an intermediate appeal to the Commissioner of Financial Institutions would be introduced. (p. 10)

Discussion

In general, as discussed in the earlier sections, the Committee does not wish to comment on the proposed revision of the internal structure of the Ministry -- neither approval nor disapproval of those recommendations in the White Paper that deal with such matters is expressed. The Committee is, however, pleased to note that pursuant to this recommendation, there is a final appeal from a decision of the Registrar to the Lieutenant Governor in Council. As discussed earlier, this appeal mechanism ensures that the doctrine of ministerial responsibility is preserved. The Committee is pleased that ultimate accountability to the Legislature is safeguarded by maintaining this procedure.

4. No absolute limitation on the ownership of the shares of a loan or trust corporation operating in Ontario is proposed at present, although such a limitation was seriously examined, and some discretion in this respect may be desirable. (p. 10)

Discussion

There is little doubt that the single most controversial topic dealt with in the White Paper was the question of whether loan and trust companies should be permitted to be closely held or whether, as with banks, there should be a statutory limit on the degree of ownership one individual or company or related individuals and companies can have in a regulated corporation. The parameters of the debate over this issue are defined by two extreme positions: on the one hand, it is argued that the most effective means to prevent the abuse of a regulated company is by ensuring that the company is broadly

enough held to preclude a single owner from controlling it; alternatively, it is maintained that abuse can be prevented by regulation, particularly in the enactment of strict conflict of interest guidelines, and that limiting ownership merely entrenches management. The Committee recognizes that there are strengths and weaknesses in both these positions and that the matter cannot be resolved on the basis of a simplistic solution that purports to definitively answer all of the concerns raised during the discussion. In the words of the White Paper itself:

> . . .The reality is that someone or some group will generally have effective practical control over a corporation at any given time, whether that is based on ownership or management. It is both simplistic and misleading to base a regulatory regime on restrictions intended to deal with only one source of control. (p. 23)

After considerable deliberation, the Committee has decided to support the position advocated in the White Paper against limiting ownership. In so doing, the Committee recognized the complexities of the debate outlined above, but concluded that the potential for abuse could not be resolved simply by limiting ownership. In the final analysis, the Committee supports the White Paper proposal not because we are unaware of what can happen if a company is manipulated by an unscrupulous controlling shareholder, but because we felt that ownership is not the key problem with loan and trust companies provided that sufficient controls are introduced.

> 5. The possibility of a majority shareholder putting personal interests ahead of fiduciary responsibilities can probably be more effectively dealt with by specific conflicts of interest amendments rather than by absolute limitations of ownership. (p. 10)

Discussion

It is clear that this recommendation is seen as being the other side of the ownership issue discussed in the previous recommendation. Just as it is simplistic to believe that all problems can be circumvented by limiting

ownership, the Committee is equally of the view that it is unrealistic to expect that potential abuses by a controlling shareholder will be eliminated by detailed conflict of interest rules. Drafting comprehensive and effective conflict of interest guidelines is an extremely difficult task which, in the Committee's view, may not be possible given the complexity of the financial services industry.

The Committee believes that the appropriate response to a decision to continue to permit unlimited ownership in a trust or loan company is to set up a whole series of controls that would protect investors and depositors. As part of this system, as effective and comprehensive conflict of interest rules as possible should be implemented. It is important, however, to view these rules as only one part of the entire regulatory scheme.

The Committee noted the concept of public interest directors, who would act as a counterbalance to both entrenched management and controlling shareholders. We feel that this concept deserves further study and the Committee recommends that it be carefully and thoroughly examined by the Ministry.

> 6. The emphasis on greater monitoring of the decision-making process by boards of directors, auditors, management and others, which involves more self-policing, would seem to be a better way of preventing conflict of interest abuses. (p. 10)

Discussion

The Committee agrees with this recommendation, and endorses the language of the text of the White Paper:

> . . .As stated earlier, the most effective preventative is self-policing, sound and prudent business practices, and the recognition of their responsibilities by directors, managers, lawyers, auditors and valuators. A multi-faceted approach is proposed to encourage all corporations to make the necessary changes in their business practices and operations and to bring home to professionals the nature and importance of their obligations in carrying out their professional responsibilities. . . . (p. 26)

PART E

CONFLICTS OF INTEREST

Introduction

Two themes ran through the Committee's discussions on this section. The Committee strongly endorses the White Paper's position that professionals must be more cognizant of the importance of their professional obligations. Secondly, the Committee is concerned with what it perceives as a tendency to over-regulation in areas which have traditionally been management's responsibility.

1. To prevent the reoccurrence of recently discovered abuses, a multifaceted approach is proposed involving not only a more active and stringent regulatory process but also increased self-policing, sounder and more prudent business practices and an increased awareness of their respective responsibilities by directors, managers, lawyers, auditors, valuators and other advisors. (p. 10)

3. External advisors should be made legally accountable. (p. 10)

4. Professional associations should be expected to redefine codes of conduct and ethics. (p. 10)

Discussion

The Committee views recommendation No. 1 as a statement of general principle, while No. 3 and No. 4 are seen as specific proposals which follow from and are implicit in recommendation No. 1. These three recommendations were therefore grouped together for discussion.

The Committee is in complete agreement with the principle expressed in recommendation No. 1, and strongly endorses the language of the text of the White Paper:

> A multi-faceted approach is proposed. . .to bring home to professionals the nature and importance of their obligations in carrying out their professional responsibilities and, in particular, the importance of keeping clearly identified the duty owed to the client corporation regardless of the shareholdings or management position of the person instructing them. (p. 26)

We regard the principle of professional accountability as fundamental, but have concerns about how it could be effectively implemented. The full cooperation of the professional bodies would be required, as noted in recommendation No. 4, which the Committee also endorses wholeheartedly. Unfortunately, there has not yet been full cooperation from all of these bodies. We feel strongly that the professional associations must make a positive response to the request for a redefinition of their codes of ethics: this should be forthcoming before legislation is drafted.

The Committee strongly recommends much stricter requirements with respect to professional obligations, particularly that of maintaining a sense of distance from clients; if members of self-governing bodies do not adhere more strictly to their redefined codes of ethics, it is the Committee's opinion that future government involvement in the affairs of the professions is inevitable.

We are also concerned about enforcement. It was noted, for example, that it is extremely difficult to prove intent in the case of fraud or misrepresentation, and that in any case, very few people are in a position to bring a law suit in these types of cases.

The Committee considered several ways in which the new codes of ethics could be effectively enforced. One suggestion supported by the Committee is that a form of compliance certificates be introduced. The Registrar would be entitled to request that companies provide such certificates, which would be recognized by the courts. The Committee feels that the requirement of having to sign a legal document creates a clearer awareness of legal responsibility. Along similar lines, the Committee also supported a standardized appraisal certificate, analogous to the auditor's statement. In addition, it is suggested that outside lawyers or valuators who are retained by a trust company be excluded from acting as directors of that company since they theoretically represent the shareholders.

2. Internal review procedures of registered corporations should be strengthened and tightened. (p. 10)

Discussion

The thrust of this recommendation is to ensure that there are approval levels, checks and balances, and proper operating procedures and manuals within each company; the Committee supports this concept, particularly as, by spelling out procedures to be followed, it provides a means of making directors more responsible.

However, although the Committee concurs with the notion that trust companies should have clear review and approval procedures for loans and investments, it has concerns about enforcement of such a requirement. The Committee feels that it might not be possible to translate this recommendation into legislation, noting that it is futile to recommend that procedures should be strengthened without defining how they might be strengthened. Further, since the Committee is not competent to make specific recommendations as to the type of review procedures most appropriate for a trust company, it recommends that management consultants, accountants, valuators and lawyers be invited to comment upon this recommendation. Their comments could then be considered at such time that legislation is drafted.

The Committee also notes that there has to be some mechanism by which companies would be forced to comply. It is hoped that the entry of the Registrar into the situation would be viewed as a last resort. This is consistent with the view of the Committee that internal procedures are more properly the responsibility of management, and that regulators should not, as a general rule, involve themselves in these procedures.

5. Auditors should be given rights to call and attend audit committee meetings. (p. 10)

Discussion

It was noted that if this recommendation were implemented, it would provide a means for an auditor to record publicly his dissatisfaction with company policy. It is envisaged that, if the auditor has concerns to raise with the Audit Committee, and if after having called a meeting is still dissatisfied, he would then resign and advise the Registrar as to his reasons.

The Committee supports this recommendation and also wishes to draw attention to the principle that the Audit Committee is to be a committee of the board of directors of the trust company itself, and not of the board of its holding company.

> 6. Auditors should be expected to advise the board of directors and the Registrar of breaches of conflicts of interest rules that come to their attention. (p. 10)

Discussion

The intent of this recommendation is to enlarge the scope of the duty of the auditor who already has a duty to report to the directors. This recommendation extends that duty to include the Registrar. The Committee feels that this should be an important duty of the auditor, but recognizes the problem of personal liability referred to in the text of the White Paper:

> They would be protected against personal liability for so doing provided they have acted in good faith. (p. 26)

The professional association should be consulted to determine the reasonable onus that may be placed on auditors in these circumstances.

It was also noted that this recommendation presumes conflict of interest rules which have not yet been outlined.

7. Registered mortgage brokers and their officers should be ineligible to serve as directors of loan and trust corporations. (p. 11)

Discussion

The Committee is opposed to a blanket prohibition on one class of directors, especially since there are other professions which might also be considered vulnerable to conflict of interest charges.

The Committee appreciates the validity of the Ministry's arguments behind this recommendation, and shares some of its concerns. Nonetheless, there are better methods of preventing conflict of interest situations, for example, the disclosure requirements placed upon directors in the Bank Act. The Committee strongly urges the Ministry, when drafting the new legislation, to study the pertinent sections of that Act and base the new legislation upon them.

A particular concern that the Committee shares with the Ministry is the so-called bait and switch operation, for example, where a mortgage broker and a trust company share an office. A situation can then arise where a customer believes that he is buying a guaranteed certificate from a trust company but is in fact buying a non-guaranteed mortgage. However, while this is of great concern to the Committee, it does not feel that a blanket prohibition on mortgage brokers as trust company directors is an appropriate solution. The Committee urges the Ministry to address this problem in an attempt to find an alternative solution.

8. Corporations should be prohibited from purchasing or acquiring goods or management services or paying finders' fees to any affiliated corporation or holding corporation, except with the prior approval of the Registrar. (p. 11)

Discussion

The Committee noted that the purpose of this recommendation is to prevent an income drain from a trust company to its holding company which is charging an inappropriate fee for providing management services.

While the Committee sympathises with the intent of this recommendation it cannot condone a blanket prohibition on such transactions. It was made clear to the Committee by briefs presented at its hearings, that there are many occasions when such transactions are appropriate. Neither is the Committee in favour of having every transaction approved by the Registrar. This would create an unnecessarily interventionist regulatory structure. These transactions are properly the responsibility of the board of directors.

9. A reviewable and voidable transaction concept should be introduced so that improvident transactions between corporations and insiders, or affiliates, can be set aside and money or assets recovered. (p. 11)

Discussion

Such a concept is usual in business corporation law. The Committee endorses the addition of this concept to the law regarding loan and trust corporations in order to better protect shareholders and depositors.

10. The Registrar should be given wide authority to require changes in internal approval processes and procedures of regulated corporations. (p. 11)

Discussion

In the Committee's view, this is a general principle which has been enunciated by most other recommendations in this section. Therefore, the Committee has no comment to make on this specific recommendation, except to reiterate our feeling that internal procedures are properly the responsibility of management and regulators should become involved only as a last resort.

PART F

BUSINESS AND POWERS

Introduction

The White Paper section on Business and Powers deals with a number of different issues. The recommendations share an underlying concern with the general operation of regulated companies in Ontario, but they also cover a fairly broad range of questions. The Committee has, it is hoped, approached these recommendations in a fashion which is both consistent within this chapter and with our other discussions. Because of the nature of this section, however, it could not be said that any general themes emerged during our deliberations.

1. Corporations should be obliged to make clear to their depositors the extent to which their monies are insured with the Canada Deposit Insurance Corporation. (p. 11)

Discussion

The Committee, although recognizing the need to inform consumers of the extent of CDIC coverage, voiced a number of concerns over this recommendation. In the first place, the wording of the present recommendation is overly restrictive because it limits protection to depositors. This language would apparently preclude from the ambit of protection an individual who enters a regulated company with the intention of making a deposit and instead is sold an investment which is excluded from CDIC coverage. The Committee has genuine concern for unwary consumers who assume that because they are in the offices of a loan or trust company or are dealing with an agent thereof, their funds are being "deposited" in an insured instrument. In the Committee's view this problem is compounded when a company uses an agent, who also deals in other investments, to sell insured

investments, or when an investment dealer shares common offices with a regulated company. The Ministry did recognize, during the Committee's discussions, that the present wording is overly restrictive.

This problem is compounded by the inherent difficulties in informing customers about CDIC coverage: it is always possible to state with certainty that a particular investment is not covered by the insurance, but because of the $60,000 limit imposed by the CDIC, it is practically impossible to be sure that a particular customer's deposit is insured to that limit because he or she may have other eligible deposits with the same regulated company.

The Committee conducted a limited investigation into the practices of two leading trust companies and found that both companies used signs in their branches to advertise CDIC coverage, and that brochures explaining the CDIC were widely available on the premises of the branches. Both companies included information on insurance coverage with their guaranteed investment certificates (GICs) but neither company (formally) explained coverage to customers who open savings accounts.

The Committee also has reservations about placing detailed and onerous disclosure regulations on loan and trust companies. The Committee recognizes that to some extent these corporations are in competition with banks for limited investment funds. By imposing a requirement that loan and trust companies must advertise CDIC coverage to a greater extent than chartered banks are required to do an unfair competitive advantage may be given to federally regulated banks. Consumers may be left with the impression that loan and trust companies must be unsafe places to deposit funds because of the preponderance of material in their branches informing customers about deposit insurance.

Further, such disclosure requirements may be used as a shield by unscrupulous individuals and companies should their customers' uninsured investment be lost. Such companies could attempt to limit or reduce their liability to investors by arguing that information on the level of insurance was readily

available. This is a particularly insidious weapon when a loan or trust company has corporate links with an unregulated investment company and when funds are solicited from comparatively unsophisticated people.

By raising these concerns, the Committee does not intend to erode the fundamental principle that information on CDIC coverage should generally be available. The Committee believes that the consumer should know the extent to which the CDIC protects deposits in regulated companies. But, in the Committee's view, there are a number of questions which must be considered in determining how to best inform all customers without unduly prejudicing loan and trust companies and without providing a weapon for unscrupulous companies in attempts to limit their own liability.

2. Funds held in trust should be segregated from a corporation's funds and shown separately in financial reports.

Discussion

The Committee was quite surprised to learn that trust funds are not necessarily shown separately in a company's financial reports. It was assumed that the provisions of the present Act, particularly ss. 115(2) and 116(3), would have required a separate accounting for such funds.

It is the Committee's strongly held view that these funds must be shown in a segregated balance sheet; it is not sufficient that the disclosure of the amount of guaranteed trust funds be set out in a note to the financial statements, as is often the case presently. Such a stringent practice would not only generally underline the trustee-trust beneficiary relationship provided in the legislation and continued in the White Paper, but it would also continually serve to remind the operators of trust companies of their fiduciary obligations when dealing with trust funds.

Moreover, Ontario's constitutional authority in the financial field is based on loan and trust companies being different from "banks"; by demanding that separate accounting procedures be adopted for trust funds, the Province is also asserting the very basis of its jurisdiction over the industry.

> 3. A prudent lender's standard should be introduced for mortgage lending and valuation purposes for all real estate lending.

Discussion

The issue of valuation and the meaning of the term "value" generated a great deal of discussion before the Committee. The term "value" as used in the current statute is undefined and is used to mean several different things. For purposes of the Committee's discussion, a distinction must be drawn between "market" value and "lending" or "mortgage" value.

The Committee recommends that the term "market" value for purposes of loan and trust company legislation be defined in the same fashion as in the Expropriation Act and the Assessment Act:

> The amount that the land might be expected to realize if sold in the open market by a willing seller to a willing buyer.

This statutory definition, when combined with the case law that has considered it, provides an objective, systematic and detailed definition of the term.

However, the Committee distinguishes between "market" value, as defined above, and value for the purposes of lending mortgage funds. It is at this stage of valuation that controversy most often arises. The White Paper discusses "lending value" in the following manner:

> . . .in view of some of the practices which have been recently employed it is desirable to clarify accepted practices and prescribe that the value of the real estate for mortgage lending purposes should be determined by prudent lending standards based on the likely realizable value of the real property itself on the open market under circumstances that might require foreclosure or forced sale. . . . (p. 28)

The Committee has a concern over the use of this lending value standard and its effect on the residential mortgage market. Although congruous and prudent standards must be applied in property valuation, the Committee would not like to see this practice consistently force homeowners into the second mortgage situation. In the Committee's view prudent lending standards for mortgaging of residential properties should not lead to first mortgage limits being set at levels greatly below 75 percent of their fair market value, as defined above.

Moreover, in the Committee's view it is misleading to talk about introducing prudent lending standards (as in the recommendation) because for the most part such standards already exist. What is necessary is ensuring that the standards are uniformly applied, so that lending value remains an objective criterion applying equally (or virtually equally) in all circumstances.

4. Third and subsequent mortgages should be limited as investments for all loan and trust corporations.

Discussion

This recommendation is an obvious statement of principle which cannot be commented on further until more details are provided. It is noted, however, that neither the language of the recommendation nor the text of the White Paper ("third and subsequent mortgages. . .should be limited investments", p. 29) are framed in terms of a blanket prohibition of such investments.

The Committee does, in general, support this recommendation, but advises the Ministry to consult with the industry in order to devise an appropriate limitation on third and subsequent mortgages.

> 5. The Registrar should be entitled to require corporations to establish appraisal standards and define the circumstances under which independent appraisals are required for real property.

Discussion

This recommendation, in the Committee's view, amounts more to a statement of principle than a recommendation per se. The Committee generally agrees with this principle.

The use of compliance certificates as a method of regulating loan and trust companies has previously been discussed. In the Committee's opinion the use of such certificates, signed by the chief executive officer or other senior official, would be an effective method of enforcing adherence to statutorily required appraisal standards and practices.

> 6. Loan and trust corporations should not be permitted to own directly or indirectly real property having an aggregate value in excess of 10 per cent of the book value of the assets of the corporation.

Discussion

The effect of this recommendation will be to reduce the amount of real property that loan and trust companies can own. This is accomplished by reducing the total of permitted ownership from 15 percent (the combined effect of s. 178(1)(n) and (o) of the Act) to 10 percent of the book value of the

assets of the corporation, and by including in this reduced figure the value of real property owned by a regulated company for its own use (presently excluded in the calculation because of the wording in s. 188 of the Act).

In its deliberations, the Committee discussed a number of problems that must be considered in implementing such a recommendation: (1) the time of valuation must be at the time of purchase, otherwise rising property values could lead to forced divestiture (which the Committee feels is both undesirable and unnecessary); (2) there must be a mechanism to equitably adjust the value of raw property that is purchased by a regulated company and is subsequently developed, greatly enhancing its worth; (3) this second problem may be compounded should a company legitimately seek an increase in its borrowing base because of the increased value of the developed property; and (4) there must be special consideration in classifying investments in oil and gas producing properties for purposes of this limitation.

In drafting legislation to implement this proposal, the Committee recommends that the Ministry address these problems and ensure that the statute answers the concerns raised by them.

7. Loan and trust corporations should be entitled to engage in commercial lending up to a maximum of 15 per cent of the assets of the corporation with specific limits on loans to any one borrower or related group. Corporations engaging in commercial lending should segregate their commercial lending activities from their fiduciary functions.

Discussion

The Committee agrees that commercial lending should be segregated from the so-called "basket" clause that permits limited amounts to be loaned in an otherwise unauthorized fashion. By supporting a new classification of authorized loans, commercial loans, the Committee is not expressing its approval of the 15 percent limitation suggested in the recommendation.

The Committee is also aware of the effect that this recommendation could have on other lending activities. It would permit regulated companies to become much more active in such fields as consumer lending because commercial lending would be removed from the "basket", while the level of permitted loans under that clause would apparently remain untouched.

The expansion by loan and trust companies into such fields as commercial lending leads to the possibility of a fundamental conflict between the duties owed to trust customers and the duties owed to commercial customers. The closing words of this recommendation, in suggesting that commercial lending activities be separated from fiduciary functions, recognizes the potential existence of such a conflict. In the Committee's view the legislation must ensure that a "Chinese Wall" be erected between these two types of activities. The term "Chinese Wall" refers to the separation of the operational, and if possible the physical, commercial lending and trust departments of regulated institutions.*

The Committee has not had the opportunity to assess the overall effect of the changes in investment and lending regulations on loan and trust companies. Such an examination will be necessary when the new Act is prepared.

8.	No corporation should be permitted to carry on any estate, trust or agency activity in Ontario until it has satisfied the Registrar that it has the commitment, organization and resources to do so on a long-term basis.

Discussion

As noted in the discussion on Section C of the White Paper, the Committee feels strongly that it is necessary to ensure that companies wishing to be known as "trust" companies provide full ETA services. In particular, there is a

*Wolfe Goodman, Q.C. et al, "Conflicts of Interest, Trust Companies and the Chinese Wall." Toronto: Insight, May 18, 1983.

need to ensure that such companies provide services for the management of relatively modest estates throughout the Province. The activities of the Registrar should be directed towards facilitating this objective, rather than militating against it.

The Select Committee on Company Law recommended that an intensive study of the law of the administration of estates and of the practice and procedure that surround that field of law be undertaken. (Para. 9.09(a).) That Committee set out a detailed list of matters that might be considered during such an examination. (Para. 9.06.)

The Ontario Law Reform Commission has recently completed a report on the law of trusts and has submitted it to the Attorney General. The Commission is also engaged in research for a report on the administration of estates of deceased persons.

The Committee endorses the previously stated goal of ensuring that ETA services are widely available. We, therefore, urge that legislation flowing from this White Paper recommendation, and any reforms necessary because of the recently submitted report on the law of trusts, should be designed to accomplish this goal.

PART G

MANAGEMENT AND ORGANIZATION

Introduction

In our discussions on this section of the White Paper it was evident that the Committee attaches great importance to the role of trust company director. We consider it vital that directors of trust and loan companies be aware of their legal responsibilities, and are of the opinion that the standard of care expected from trust company directors be considered greater than that expected from other corporate directors because of the special nature of the trust relationship.

Nonetheless, the Committee is generally concerned that the White Paper goes too far in its proposals for regulating the tasks of the board of directors.

> 1. Corporations should notify the Registrar following the election, removal or resignation of any director and prior notification and approval from the Registrar would be required before the appointment of the chief executive officer or chief financial officer of every registered loan and trust corporation. (p. 11)

Discussion

While the Committee sympathizes with the Ministry's reasons for making this recommendation, we have reservations as to its consequences.

The Committee concurs with this recommendation as it relates to boards of directors, and suggests further that the Registrar send to new directors a memorandum outlining the sections of trust and loan company legislation

which relates to the responsibilities of directors, since a limited investigation conducted on behalf of the Committee showed that new directors of banks and trust companies are not given a comprehensive introduction to their responsibilities by existing board members. However, the proposal that the Registrar's approval be required before appointment of a chief executive officer, makes us uneasy that the Ministry is planning to intervene too closely in what is more properly the responsibility of the Board.

Ministry representatives assured us that the proposed approval process, which is similar to that used in the United Kingdom, does not involve a detailed inquiry into the candidate's qualifications for the job. Rather, an affidavit would be required of the prospective chief executive or chief financial officer, and this would verify lack of a criminal record. The Ministry perceives this as being similar to the compliance certificates suggested by the Committee itself in its discussions on Section E dealing with conflicts of interest. The Ministry also noted that the approval process would take very little time.

The Committee is prepared to support the limited affidavit process outlined above by the Ministry. However, we wish it to be very clear that the Ministry should, under no circumstances, be intervening in the hiring of executive officers.

Finally, the Committee questioned the jurisdictional authority of the Province to apply this requirement to extra-provincial companies. However, it is consistent with the Committee's recommendations in other sections of this report that provincial jurisdiction be asserted strongly wherever necessary in order to ensure consistency of regulation throughout the industry.

2. An audit committee should be mandatory for all loan and trust corporations consisting of a majority of outside directors who are not officers or employees of the corporation. (p. 11)

3. An investment committee consisting of a majority of outside directors of the corporation should be appointed to assure appropriate standards and levels of authority for all loans and investments made by the corporation. (p. 11)

Discussion

The Committee is in concurrence with these recommendations and notes that having a majority of outside directors on these important committees gives them necessary independence. We also wish it noted that we vigorously reject the idea, contained in a brief submitted to the Committee, that if an audit or investment committee exists at the holding company level there is no need for a separate one at the trust company level.

4. The board of directors should be required to review specific financial data regularly to assist early detection of problems. (p. 11)

Discussion

The Committee agrees in principle with the White Paper that:

> The board should be given the ultimate responsibility of assuring that systems and procedures are in place defining the levels of authority and responsibility for all commitments and decisions of the corporation. The board would be expected to review regularly (at least quarterly) reports relating to:

(i) matching and mismatching;

(ii) matching sensitivities showing assets and liabilities, their maturities, and also interest sensitivities;

(iii) non-performing and default loans;

(iv) mortgage arrears statistics; and

(v) delinquent receivables. (p. 31)

However, it has serious misgivings about the tone of this recommendation which implies a requirement to be met by the directors and that the Registrar be involved.

The Committee strongly believes that unless it is certain that there is a vacuum concerning the availability of this type of information to boards of directors, then it is not the place of the Ministry either to outline what should be elementary board responsibilities, or to instruct directors in the exercise of their duties; rather the Committee recommends that directors' responsibilities under the Loan and Trust Corporations Act be made clear to new members upon joining the board. If it appears that companies do not provide new directors with this kind of information, it is the Committee's feeling that the Registrar should do so.

In general, the Committee holds a firm conviction that a sense of distance should be maintained between the Registrar and the boards of directors of trust companies. While the Committee appreciates that there might be a need for an outline of director's duties to be included in the statute we foresee problems in attempting to enforce these provisions; we are concerned that the Registrar could easily become involved to the degree that he shares responsibility in cases of negligence. Further, the Committee is anxious lest the Ministry become too intrusive, and the Registrar be given the responsibility to lecture the directors or require from them some level of performance; without any requirement for initiative on the part of directors, it is likely that an unhealthy relationship would develop, to the detriment both of the directors and of the Registrar.

The foregoing criticisms notwithstanding, the Committee has no quarrel with the White Paper's recommendation as long as it is considered only as a standard of performance for directors, or as a signal to management as to what they should supply in the way of information to the Board.

PART H

FINANCIAL STANDARDS AND CONTROLS

Introduction

The Committee is generally sympathetic to the types of standards and controls recommended in this section, but is not providing a blanket endorsement thereof. The floor and ceiling of the borrowing multiple should be clearly spelt out in the legislation, although the Committee does not wish to comment on the specific numbers proposed for this purpose. The Committee agrees that the regulatory system should permit the Registrar to prescribe borrowing costs and to establish standards for borrowing and lending. However, any additional powers afforded to the Registrar under these recommendations must be part of an entire system which only permits direct intervention under extraordinary circumstances. Moreover, it is recognized that there are inherent difficulties in developing such standards.

1. The Registrar should be given authority to control borrowing from the public by determining the assets to be included in the borrowing base and the authorized borrowing multiple. Borrowing multiples should vary with proven experience and resources from a minimum of 10 times the borrowing base to a maximum of 25 times. (p. 12)

Discussion

The Committee has previously expressed its support for permitting the Registrar to control borrowing by determining both the assets to be included in the borrowing base and the authorized borrowing multiple of a regulated company. This mechanism provides a necessary tool to the Registrar for the regulation of companies operating in Ontario; in that sense it is related to the questions of incorporation, licensing and annual inspection, and, as discussed earlier, this authority must be exercised in a consistent fashion.

The central feature of this recommendation is its explicit statement of the floor and ceiling of the borrowing multiple. Unlike the present situation, the Committee understands that this recommendation will result in these two limits being clearly stated in the legislation. Although the Committee does not wish to comment on these precise numbers, it is agreed that placing them in the legislation adds desired clarity to the regulation of the industry.

It has been suggested that this information be made public on a regular basis. The Committee is aware that there are valid arguments both for and against such disclosure. While the Committee is not prepared to take a definite stand on this issue, we urge the Ministry to consider the question in more depth before legislation is drafted.

2. The Registrar should be entitled to prescribe maximum borrowing costs and commissions payable by a corporation from time to time in the light of prevailing market conditions. (p. 12)

Discussion

Although the 1982 amendments to the Loan and Trust Corporations Act provided broad powers to the Registrar to intervene into the affairs of regulated companies, the Committee was told that in order to prescribe borrowing costs and commissions payable by a corporation, an order in council would be required. In the view of the Ministry, there is a need for a mechanism to permit the Registrar to move more expeditiously where it is appropriate to do so. This recommendation, if implemented, would provide such a tool.

The Committee does not object to giving the Registrar the power to intervene in such a fashion, provided that the intervention is the final step in a detailed system that would include receiving regular financial reports from companies as well as routine monitoring of the industry. In this process, the Registrar could make inquiries prior to intervening into the affairs of the company, and

could usually avoid the necessity of so doing. Nevertheless, in extraordinary circumstances, the Registrar could quickly move in to prescribe maximum borrowing costs and commissions payable by a corporation.

The Committee noted that the Ministry expressed approval of the language used in a brief submitted to the Committee by the Trust Companies Association of Canada.

> "While we can understand that in extraordinary circumstances the Registrar may from time to time find it desirable to limit borrowing costs and commissions incurred by a particular corporation, we hope that no attempt would be made by regulatory authorities to set interest rates across-the-board."

3. Standards for matching of interest and terms of borrowing and lending should be established, with the Registrar given broad authority to require corrective action where mismatching occurs. (p. 12)

Discussion

This provision is not so much a recommendation as a statement of intention. It was explained that the Ministry would be working closely with the industry in order to develop broad standards that the Registrar could use in monitoring the industry and in requiring corrective action where necessary. Such principles do not presently exist.

Although the Committee is generally sympathetic to this intention and to the implementation of such a system, we recognize the difficulties that this entails. In the Committee's view the problem of mismatching cannot be entirely avoided by some form of regulation. It would be misleading to expect that the system will be able to circumvent all of the difficulties that can potentially arise in a complex and occasionally volatile financial industry.

PART I

FINANCIAL RECORDS AND REPORTS

1. A major restructuring of the reporting process is proposed for all loan and trust corporations. An experimental reporting system now being tested will be introduced and expanded in 1984 for all loan and trust corporations operating in Ontario. The system would show exceptions and infractions and provide an early warning signal for potential problems. It should be accompanied by audits and investigations specifically directed to problem areas. (p. 12)

Discussion

The major differences between this experimental system and the previous system are the frequency of the reports and the quantity of data collected. Previously, most companies were only required to report annually; under the experimental system monthly reports will be required from all 92 Ontario-licensed loan and trust corporations. As well, the information required is more detailed, including a requirement for a greater number of financial ratios. All the information is entered into a computer data bank. Profitability, potential capitalization problems, infractions of investment limits and financial ratios are all monitored. In addition to a company's performance being monitored over time, with red-flag signals generated automatically, comparisons between companies can also be made, since the new system ranks the data provided.

The Committee applauds the intent of the new system but does not feel qualified to comment favourably or unfavourably on the technical aspects of the scheme. We would caution, however, that such a reporting system should not be regarded in any way as a substitute for continued vigilance on the part of the Registrar.

2. All loan and trust corporations should standardize their record keeping and reporting. (p. 12)

Discussion

The Committee agrees that this would be a desirable goal, but is concerned that it might be an impractical one given the rapidly changing nature of the financial services sector. Further, we recommend that it be made clear in the legislation that company records should be kept on company premises. We regret that such a recommendation appears necessary, since we had thought that such a policy would be normal business practice. There should be a significant penalty for companies which do not comply with this requirement.

It is also the recommendation of the Committee that trust companies be required to submit quarterly financial reports to the Registrar. They should be submitted in a timely fashion and penalties for non-compliance should be significant. It is understood that the chartered banks, in common with other companies listed on the major stock exchanges, are required under securities legislation to provide quarterly reports; the Committee feels therefore, that it is not an onerous request to make of trust companies. We recognize that such reports would, by their nature, be unaudited, although they would be signed by the chief executive or chief financial officer. This does not mean, of course, that they would be inaccurate.

The Committee had some discussion at this point concerning the issue of disclosure. On the one hand, it was argued that since annual financial information on trust companies is available to the public in the Registrar's Annual Report, consistency requires that the proposed quarterly reports also be made publicly available as is presently the case under the Securities Act with the chartered banks and publicly-traded trust companies. In addition, chartered banks are required to disclose any material change in their affairs on a timely basis. On the other hand, it was suggested that public disclosure of a company's financial problems, which could be temporary in nature, could undermine public confidence and adversely affect established company-customer relationships. Because the Committee recognizes the validity of these and other arguments on both sides of the question, we are unable to reach agreement on the issue.

PART J

ENFORCEMENT

> New safeguards and remedial actions are proposed where the additional self-policing responsibilities are not adequate to protect the public interest, including in particular:
>
> - the investigative capability of the ministry respecting financial institutions should be substantially strengthened;
> - a rehabilitation capability should be created for monitoring and enforcing a course of action directed by the Registrar with a view to restoring a corporation to full compliance with the Act and regulations, all designed to achieve rehabilitation without the Registrar taking physical possession; and
> - where rehabilitation is not possible for any reason and taking possession is necessary, the Registrar's authority should be strengthened and his options increased. (p. 12)

Discussion

The Committee recognizes that there is a need for an investigative capability within the Ministry, and has previously discussed this question. Of more importance under this section is the need to consider the further development and refinement of a rehabilitation capacity within the Ministry. We recognize that management contracts - where one company manages another for an extended period - are one mechanism for rehabilitation, and are currently in use by the Ministry.

Although events in the recent past have led to amendments in the present Act that allow the Registrar to attempt to rehabilitate a company, it is acknowledged that the procedures as presently constituted could be refined further. This is necessary both to allow for rehabilitation and also to ensure that those affected by such efforts are afforded protection by due process. The latter consideration is particularly important where there has been an

unsuccessful attempt to rehabilitate the company and the Registrar has decided that further steps must be taken. Provisions for such a process are contemplated in the White Paper:

> Where the Registrar has taken possession and control of the assets of any corporation and is satisfied that the rehabilitation of the corporation is not possible within a reasonable period or that it is otherwise not in the best interests of the depositors to attempt to do so, the Registrar would be entitled to apply to the court for an order:
>
> (i) authorizing some other person to carry on the business of the corporation on such terms and conditions as the court thinks fit;
>
> (ii) authorizing and directing the sale of the assets of the corporation in whole or in part, subject to the direction of the court;
>
> (iii) appointing interim or permanent substitute trustees in respect of all or any part of the fiduciary or trust business of the corporation; and
>
> (iv) authorizing or directing such other action as the court thinks appropriate and in the best interest of the depositors, the creditors and the public. (p. 37)

The Committee acknowledges the need to fully develop the intermediary rehabilitative process, and the concurrent need to ensure that due process is afforded to those affected by this procedure. Thus, the Committee recommends that it be made clear that the Registrar must also apply to the court for authorization to sign a management contract.

PART K

HEARINGS AND APPEALS

1. An expedited hearing and appeals procedure is proposed under which the Registrar should be entitled to direct corporations to take or refrain from taking specific action and the corporation would be bound by that direction during the appeal process, so that depositors' money and the public interest would be protected until the potentially lengthy appeal process has run its course. (p. 12)

Discussion

The Committee has no disagreement with this recommendation.

2. Appeals on errors of law or fact from decisions of the Registrar would be provided to the courts and an additional appeal on matters of significant business import would be available to the Commissioner. (p. 12)

Discussion

The Committee endorses this recommendation.

3. Where the Registrar has been obliged to take possession of a loan or trust corporation and rehabilitation is not possible, then the courts would be given a new and significant role in determining the terms and conditions under which the Registrar would remain in possession or the assets and undertaking would be sold. (p. 12)

Discussion

The Committee supports this recommendation. It is noted that the proposal would not change the present policy significantly, save that the Registrar would in future be able to go to the court with the most viable business option and get it approved.

DISSENTING OPINION

We, James Renwick, Q.C., MPP (Riverdale) and Michael Cassidy, MPP (Ottawa Centre) by this addendum dissent as follows:

In signing the report, we remain concerned that a vital area has not been fully addressed: that is, simply, the extent and degree of concentration of financial power that shows itself not only in trust companies but throughout the financial institutions in our province and country. Financial institutions collectivize capital and concentrate power.

The concentration of power in the trust industry shows itself in two ways. First, trust companies have become significant players in the Canadian financial market with assets exceeding 92 billion dollars. Control of these assets has in many cases been concentrated in the hands of a few individuals and families. They have reinforced this economic power by creating connections with other sectors of the financial industry including the securities industry, mortgage companies and insurance companies.

Second, there is the added abuse of power involving unscrupulous operators who have thrown fiscal responsibility to the wind and used large pools of funds invested in trust for speculative profiteering and financial manipulation.

The legal presumption in favour of management and the unwillingness of courts to control or reverse management action, save in cases of the most elementary types of dishonesty or fraud, leaves these managers and owners with power which is close to absolute. Also, when one shareholder has a controlling interest in a trust company, it is almost impossible to regulate against conflict of interest, or to maintain a genuinely independent board of directors.

A trust company, like other financial institutions, has a special relationship with customers and investors. The public has a right to expect, and the government has an obligation to provide, strict and stringent safeguards against the abuse of monies at the disposal of trust companies. Yet, time and time again, we have seen the administration of the regulatory safeguards enacted by the Legislature fail.

Rather than dismiss the issue, as both the White Paper and the Committee have done, we therefore, believe that the Government must explore a variety of ways to break up excessive concentration of financial power in the trust industry and to prevent its abuse.

The White Paper pretends to be a comprehensive document. Yet, we doubt whether the Ontario Government is at all willing to deal with the issue of concentration of financial power in the trust and loan industry. There is nothing in its record to indicate otherwise. Failing response by the Government on this essential issue, there will be no alternative but to apply arbitrary limits on single shareholdings in trust and loan companies, as recommended by the 1982 federal discussion paper on loan and trust legislation and in the submission of the Canadian Bankers' Association.

Apart from a comprehensive regulatory framework and a vigilant enforcement capacity which the Report as a whole recommends, the Report fails to mirror the need for timely and continuous public disclosure and insider and financial reporting and the need to provide now for public interest directors appointed by Government.

We recommend the requirement by law for the appointment of public interest directors to the boards of trust and loan companies to ensure that the public interest, and the public's trust, is not forgotten in the quest for private profit and to ensure compliance with the rules and spirit of the legislative framework of regulation.

We recommend a much higher and more rigorous standard of disclosure of information and insider and financial reporting by trust and loan companies to the public. The provision of the present Act that makes the financial statement and auditor's report available upon request to any depositor or other investor should be retained. Reports filed annually and quarterly with the Registrar should be matters of public record, as should directives to trust companies or other actions taken by the Registrar which materially affect the business and affairs of the companies being regulated.

By far the best way of assuring that this information is made accessible to those interested would be for the Registrar of Loan and Trust Companies to publish a separate bulletin at regular intervals, as does the Ontario Securities Commission.

Information on how funds are being used, on the degree of risk involved in a trust company's various transactions and dealings with other companies and interests, and on the general health and reserve and capital back-up is surely vital for maintaining investor and depositor confidence. Moreover, it is surely also in the interest of those trust companies which are prudently operated and have nothing to hide from the public to have companies whose continued presence may detract from general confidence in trust companies exposed and removed from the industry.

We were unable to persuade our colleagues on the Committee of the need for positive firm recommendations for immediate action in these areas. It is trite to say that no system is foolproof but the report is defective in not addressing as matters of urgency these concerns.

* * * * *

APPENDIX I

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
PROPOSALS FOR REVISION OF THE LOAN AND TRUST CORPORATION LEGISLATION AND ADMINISTRATION IN ONTARIO (WHITE PAPER)

LIST OF SUBMISSIONS TO THE COMMITTEE AND THE WHITE PAPER PROPOSALS WHICH EACH ADDRESSED

The Canada Trust Company (18)
B. 2,3,7; C. 2,4,8; D. 4; #. 8,10; F. 6,7; G. 1; H. 1,2

Canadian A.S.A. Society of Appraisers (39)
E. 1,3,4; F. 3,5

Canadian Bankers' Association (26)
B. 5; C. 1,7; D. 4

The Canadian Depository for Securities Limited (21)
D. 1

Canadian Institute of Public Real Estate Companies (CIPREC) (22)
F. 6

Canadian Life and Health Insurance Association (14)
C. 3,15; J. 1

Co-operative Trust Company of Canada (31)
B. 5; C. 3,12; E. 5,8,10; F. 2,3,6,7; G. 1,2; H. 2; I.1

Dominion Trust Company (33)
B. 5; C. 5; E. 7; F. 6,8; H. 1

First City Trust Company (27)
B. 5; C. 7,8,11,12; D. 4; E. 2,8; F. 3,6,7; G. 3; H. 2; I.1

Prof. Seymour Friedland, York University (7)
C. 4; I. 1

Mr. A. F. Gasbarini, St. Catharines (16)
E. 8

Guardian Trustco Inc. (8)
C. 3,8; E. 2; F. 4,5,8; H. 1

Hughes, King and Company Ltd. (43)
C. 4; E. 8; F. 2; G. 1; K. 3

Huronia Trust (12)
B. 3; C. 4; F. 7; G. 1

The Institute of Chartered Accountants of Ontario (20)
B. 3,5; E. 4; F. 2; G. 1,3; I. 1,2

Mr. Jules N. Kronis, Downsview (30)
B. 7; C. 7; E. 4; F. 1; I. 2; J. 1

The Manufacturers Life Insurance Company (44)
B. 5; C. 4,8; D. 4

Morguard Investments Limited (34)
B. 5; C. 1; D. 1

Ontario Association, Appraisal Institute of Canada (28)
B. 3; E. 3,4; F. 3,5

Ontario Loan and Trust Companies Association (50)
B. 1,3; C. 4; H. 1; I. 1; K. 2

Regional Trust Company (15)
B. 2,7; C. 4,15; E. 7,8; F. 4,6,7; G. 1,4; H. 2; J. 1

Mr. K. Reynert, Oshawa (13)
D. 4

Royal Trust (25)
C. 8,12; D. 4; E. 5; F. 3,6,7; G. 3

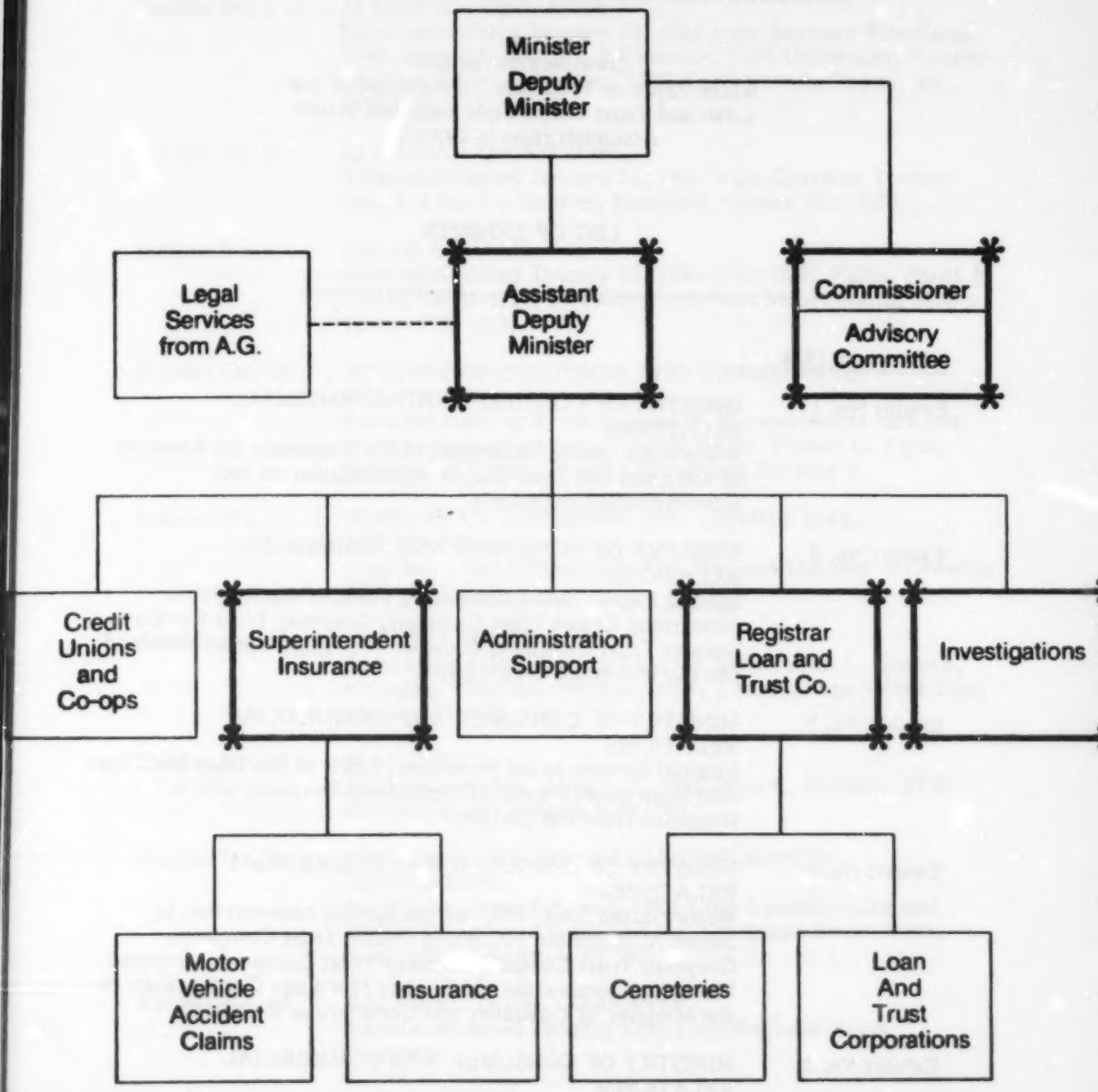
Seel Mortgage Investment Corporation (24)
E. 7,8

Trust Companies Association of Canada (19)
B. 5; C. 2,3,4,6,8; D. 4; E. 6,7,10; F. 2,3,6,7; G. 1; H. 1,2,3; I. 1,2

Mr. Graham T. Welsh, London (23)
D. 4; F. 8

APPENDIX 2

Organization of Financial Institutions Division as Suggested By White Paper Nov. 1983



NOTE: Areas indicated by an asterisk represent changes to existing structure

APPENDIX 3

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Consideration of the White Paper on Proposals for Revision of the Loan and Trust Corporation Legislation and Administration in Ontario

LIST OF EXHIBITS

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7 February 1984

Exhibit No. 1	MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS: White Paper dated November, 1983: Proposals for Revision of the Loan and Trust Corporation Legislation and Administration in Ontario.
Exhibit No. 2	MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS: Special Report dated November, 1983, of the Registrar concerning Crown Trust Company, Greymac Trust Company, Seaway Trust Company, Greymac Mortgage Corporation and Seaway Mortgage Corporation.
Exhibit No. 3	MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS: Internal Review dated November, 1983, of the Loan and Trust Administration, Financial Institutions Division, with a Response from the Division.
Exhibit No. 4	MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS: Report dated June, 1983, of the Special Examination by James A. Morrison, F.C.A., of Crown Trust Company, Greymac Trust Company, Seaway Trust Company, Greymac Mortgage Corporation and Seaway Mortgage Corporation, to the Minister of Consumer and Commercial Relations.
Exhibit No. 5	MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS: Appendix (5 parts), dated June, 1983, re: Morrison Report (Exhibit No. 4).

Exhibit No. 6	MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS: 1975 Report of the Select Committee on Company Law.
Exhibit No. 7	SEYMOUR FRIEDLAND: Submission dated January 20, 1984 from Seymour Friedland, Professor of Economics & Finances, York University, Faculty of Administrative Studies, 4700 Keele Street, Downsview M3J 2R6.
Exhibit No. 8	GUARDIAN TRUSTCO INC: Submission dated January 26, 1984 from Guardian Trustco Inc., 618 rue St. Jacques, Montreal, Quebec H3C 1E3.
Exhibit No. 9	FALLIS & FALLIS: Submission dated January 23, 1984 from C. E. Fallis, Fallis & Fallis, Barristers & Solicitors, 150 Main Street South, Mount Forest N0G 2L0.
Exhibit No. 10	MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS: Statement and/or Press Release on the apartment sale and trust companies matter, released by Dr. Robert G. Elgie, Minister of Consumer and Commercial Relations.
Exhibit No. 11	MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS: Loan and Trust Corporation Act, Revised Statutes of Ontario, 1980.
Exhibit No. 12	HURONIA TRUST: Submission dated January 27, 1984 from James L. Graham, Managing Director, Huronia Trust, 2 Mississauga Street East, Orillia L3V 6H9.
Exhibit No. 13	K. REYNERT: Submission dated January 27, 1984 from K. Reynert, 2736 Moncton Road, Oshawa K2B 7W1.
Exhibit No. 14	CANADIAN LIFE AND HEALTH INSURANCE ASSOCIATION: Submission dated February 1984 from Canadian Life and Health Insurance Association Inc., 20 Queen Street West, Suite 2500, Toronto M5H 3S2.
Exhibit No. 15	REGIONAL TRUST COMPANY: Submission dated January 1984 from Regional Trust Company.
Exhibit No. 16	A. F. GASBARINI: Submission from A. F. Gasbarini, 6 Lake Street, St. Catharines L2R 5W6.

Exhibit No. 17 — TRUST - THE GREYMAC AFFAIR:
Background information: Trust - The Greymac Affair, by Terrence Belford.

Exhibit No. 18 — THE CANADA TRUST COMPANY:
Submission dated February 1, 1984 from The Canada Trust Company, London, Ontario.

Exhibit No. 19 — TRUST COMPANIES ASSOCIATION OF CANADA:
Submission dated February 1984 from Trust Companies Association of Canada, Herbert House, 7th Floor, 335 Bay Street, Toronto M5H 2R3.

Exhibit No. 20 — THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO:
Submission dated February 3, 1984 from J. R. Bones, 1st Vice-President, Chairman of Committee on Loan and Trust Corporations, The Institute of Chartered Accountants of Ontario, 69 Bloor Street East, Toronto M4W 1B3.

Exhibit No. 21 — THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED:
Submission dated February 3, 1984 from Thomas Marley, Corporate Secretary & Counsel, The Canadian Depository for Securities Limited, 2 First Canadian Place, Lower Level North, Toronto M5X 1A9.

Exhibit No. 22 — CANADIAN INSTITUTE OF PUBLIC REAL ESTATE COMPANIES:
Submission dated February 2, 1984 from Michael A. Galway, Executive Director, Canadian Institute of Public Real Estate Companies, Suite 2806, 390 Bay Street, Toronto M5H 2Y2.

Exhibit No. 23 — GRAHAM T. WELSH:
Submission dated January 30, 1984 from Graham T. Welsh, 522 Pine Tree Drive, London N6H 3N1.

Exhibit No. 24 — SEEL MORTGAGE INVESTMENT CORPORATION:
Submission dated February 3, 1984 from Leonard R. Exton, Director & Treasurer, Seel Mortgage Investment Corporation, 123 Edward Street, Suite 1022, Toronto M5G 1Y4.

Exhibit No. 25 — ROYAL TRUST:
Submission dated February 1984 from Royal Trust.

Exhibit No. 26 — THE CANADIAN BANKERS' ASSOCIATION:
Submission dated February 1984 from The Canadian Bankers' Association, P. O. Box 282, Toronto Dominion Centre, Toronto M5K 1K2.

Exhibit No. 27 — FIRST CITY TRUST COMPANY:
Submission from First City Trust Company.

Exhibit No. 28 THE ONTARIO ASSOCIATION, APPRAISAL INSTITUTE OF CANADA:
Submission from Peter E. Burton, Executive Director, the Ontario Association, Appraisal Institute of Canada, 5468 Dundas Street West, Suite 330, Islington M9E 6E3.

Exhibit No. 29 MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS:
Background information: The Canadian Trust Industry, by Trust Companies Institute of Canada.

Exhibit No. 30 JULES N. KRONIS:
Submission dated February 3, 1984 from Jules N. Kronis, 45 Timberland Drive, Downsview M3H 1J3.

Exhibit No. 31 CO-OPERATIVE TRUST COMPANY OF CANADA:
Submission from Co-operative Trust Company of Canada, 363 3rd Avenue North, Saskatoon, Saskatchewan S7K 2M2.

Exhibit No. 32 HFC TRUST:
Submission dated February 6, 1984 from HFC Trust Limited, 85 Bloor Street East, Toronto M4W 1B4.

Exhibit No. 33 THE DOMINION TRUST COMPANY:
Submission dated February 3, 1984 from Murray Goldman, Chairman, The Dominion Trust Company, 250 Madison Avenue, Toronto M4V 2W6.

Exhibit No. 34 MORGUARD INVESTMENTS LIMITED:
Submission dated February 6, 1984 from Richard Gibson, Executive Vice-President, Morguard Investments Limited, 6 Crescent Road, Toronto M4L 3K9.

Exhibit No. 35 MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS:
Opening Statement dated February 7, 1984 from The Honourable Robert G. Elgie, M.D., Minister of Consumer and Commercial Relations.

Exhibit No. 36 MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS:
Background information: "Importance of Ontario's Loan and Trust Industry" from R. G. Cooper, Deputy Superintendent, Legal and Investigation Branch of Insurance and Assistant Registrar.

Exhibit No. 37 MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS:
Background information: "Overview of the Act" from Mr. Donald A. Crosbie, Deputy Minister of Consumer and Commercial Relations.

Exhibit No. 38 — MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS:
Background information: "History and Background Concepts" from Mr. Donald A. Crosbie, Deputy Minister of Consumer and Commercial Relations.

14 February 1984

Exhibit No. 39 — CANADIAN SOCIETY OF APPRAISERS:
Submission dated February 9, 1984 from Edward Elliott, President, Canadian Society of Appraisers.

Exhibit No. 40 — THE INVESTMENT FUNDS INSTITUTE OF CANADA:
Submission dated February 8, 1984 from Keith A. Douglas, President, The Investment Funds Institute of Canada, 70 Bond Street, Suite 400, Toronto M5B 1X2.

Exhibit No. 41 — CANADIAN SOCIETY OF APPRAISERS:
Background information dated February 23, 1983: "Appraising the Cadillac Fairview apartment properties: a case study", prepared by J. Wallace Beaton, F.C.A., A.S.A. (one copy only).

Exhibit No. 42 — LEGISLATIVE RESEARCH SERVICE:
Press Clippings.

16 February 1984

Exhibit No. 43 — HUGHES, KING & COMPANY LIMITED:
Submission dated February 1984 from C. Wallis King, Suite 1808, 150 York Street, Toronto M5H 3S5.

Exhibit No. 44 — THE MANUFACTURERS LIFE INSURANCE COMPANY:
Submission dated February 15, 1984 from Thomas A. DiGiacomo, Senior Vice-President, Investment, The Manufacturers Life Insurance Company, 200 Bloor Street East, Toronto M4W 1E5.

Exhibit No. 45 — TRUST COMPANIES ASSOCIATION OF CANADA:
Opening Statement dated February 16, 1984 from Alan R. Marchment, Chairman, Herbert House, 7th Floor, 335 Bay Street, Toronto M5H 2R3.

21 February 1984

Exhibit No. 46	MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS: Background information: "Crown Trust Company, Consolidated Financial Statements", dated December 31, 1982 from Peat, Marwick, Mitchell & Co., Chartered Accountants.
Exhibit No. 47	MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS: Forms: (1) Trust Companies - Semi-Annual Statement; (2) Trust Companies - Annual Statement; and (3) Quarterly Liguidity Statement.
Exhibit No. 48	ONTARIO MORTGAGE BROKERS ASSOCIATION: Submission dated February 20, 1984 from Leonard R. Exton, President, Suite 537, 67 Mowat Avenue, Toronto M6K 3E3.
Exhibit No. 49	MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS: Background information: "Corporate accountability: the Canadian interest" by Michael J. Gough.
Exhibit No. 50	ONTARIO LOAN & TRUST COMPANIES ASSOCIATION: Submission from Ontraio Loan & Trust Companies Association.
Exhibit No. 51	CANADIAN BANKERS' ASSOCIATION: Supplementary Submission dated February 22, 1984 from Robert M. MacIntosh, President, P. O. Box 282, Toronto Dominion Centre, Toronto M5K 1K2.
Exhibit No. 52	J. BREITHAUPT, M.P.P: Background information: Speech dated February 21, 1984 by M. L. Lahn, President and Chief Executive Officer, Canada Trustco.
Exhibit No. 53	CANADIAN BANKERS' ASSOCIATION: Background information dated January 25, 1983: News release from Canadian Commercial Bank re: refusal to register shares acquired by Seaway and Crown; resignation of Chairman.
Exhibit No. 54	MUNICIPAL SAVINGS & LOAN CORPORATION: Letter dated February 22, 1984 from Maxwell L. Rotstein, President, 808 Mount Pleasant Road, Suite 200, Toronto M4P 2L2.
Exhibit No. 55	THE LAW SOCIETY OF UPPER CANADA: Letter dated February 27, 1984 from A. R. Dick, Under Treasurer, Osgoode Hall, Toronto M5H 2N6, to Al Kolyn, M.P.P., Chairman, Standing Committee on Administration of Justice.

Exhibit No. 56	HFC TRUST: Letter dated February 27, 1984 from D. G. Bennett, 85 Bloor Street East, Toronto M4W 1B4, to Al Kolyn, M.P.P., Chairman, Standing Committee on Administration of Justice.
Exhibit No. 57	H. J. KNOWLES, Q.C: Submission dated January 26, 1984 from H. J. Knowles, Q.C., Suite 1808A, 150 York Street, Toronto M5H 3S5.
Exhibit No. 58	LEGISLATIVE RESEARCH SERVICE: Summary of Recommendations made within briefs and presentations on the proposals for Revision of the Loan and Trust Corporations Legislation and Administration in Ontario, prepared by Albert Nigro, Peggy Mooney, Research Officers.
Exhibit No. 59	MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS: Background information: "Organization of Financial Institutions, Division as suggested by White Paper, Nov. 1983".
Exhibit No. 60	MORGAN TRUST: Letter dated February 27, 1984 from J. A. Worsley, President and Chief Executive Officer, Toronto-Dominion Bank Tower, Suite 2710, Toronto M5K 1E7, to W. D. Arnott, Clerk, Standing Committee on Administration of Justice.
Exhibit No. 61	KITCHENER CHAMBER OF COMMERCE: Mr. I. M. Marr, Member.
Exhibit No. 62	SEEL ENTERPRISES LIMITED: Leonard R. Exton, Chief Operating Officer.
Exhibit No. 63	ONTARIO SECURITIES COMMISSION: Position Paper dated March 2, 1984: Draft and Interim Policy on Restricted Shares and Request for Comments.

APPENDIX 4

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

LOAN AND TRUST REVIEW

SCHEDULE OF HEARINGS

February to April, 1984

Tuesday, 7 February 1984
(Morning Session)

10:00 a.m.	1.	Hon. Robert G. Elgie, M.D., M.P.P., Minister of Consumer and Commercial Relations (Exhibit 35)
	2.	Overview by Ministry of Consumer and Commercial Relations (Exhibits 36, 37 and 38)

(Afternoon Session)

2:00 p.m.	1.	Ministry Overview

Wednesday, 8 February 1984
(Morning Session)

10:00 a.m.	1.	Ministry Overview

Thursday, 9 February 1984
(Morning Session)

10:00 a.m.	1.	Ministry Overview

(Afternoon Session)

2:00 p.m.	1.	Ministry Overview

Tuesday, 14 February 1984
(Morning Session)

10:00 a.m.

1. Canadian ASA Society of Appraisers (Exhibits 39 and 41)
   J. Wallace Beaton, Past President

(Afternoon Session)

2:00 p.m.

1. Seel Mortgage Investment Corporation (Exhibit 24)
   Leonard R. Exton, Director and Treasurer

   Lorie Waisberg, Counsel

2. Co-operative Trust Company of Canada (Exhibit 31)
   Edward Gebert, Chief Executive Officer

   John Feron, Member, Board of Directors

   John Lipsett, Corporate Secretary

Wednesday, 15 February 1984
(Morning Session)

10:00 a.m.

1. Jules Kronis (Exhibit 30)

2. The Institute of Chartered Accountants of Ontario (Exhibit 20)
   J.R. Bones, First Vice-President
   Chairman, Committee on Loan and Trust Corporations

   J.H. Denman, Committee on Loan and Trust Corporations; Accounting Standards Director, Canadian Institute of Chartered Accountants

   R.R. Finch, Committee on Loan and Trust Corporations; Price Waterhouse

   P.G. LaFlair, Director, Professional Services; Committee on Loan and Trust Corporations

   D.C. Selley, Committee on Loan and Trust Corporations; Auditing Standards Director, Canadian Institute of Chartered Accountants

Thursday, 16 February 1984
(Morning Session)

10:00 a.m.

1. Hughes King & Company Limited (Exhibit 43)
   C. Wallis King, President

   John R. Finley, Q.C., Legal Counsel

(Afternoon Session)

2:00 p.m.

1. Trust Companies Association of Canada (Exhibits 19 and 45)
   William Potter, President

   Alan R. Marchment, Chairman

   J.L.A. Colhoun, Past Chairman

Tuesday, 21 February 1984
(Morning Session)

10:00 a.m.

1. Ontario Mortgage Brokers Association (Exhibits 48 and 62)
   Leonard R. Exton, President

   Paul Ezrin, Past President

(Afternoon Session)

2:00 p.m.

1. The Ontario Loan and Trust Companies Association (Exhibit 50)
   David Cunningham, President; with Termguard Savings and Loan Co.

   J. Phinn, Vice-President; with Counsel Trust Co.

   J. Matthew, Secretary; with Confederation Trust Co.

2. Appraisal Institute of Canada - Ontario Association (Exhibit 28)
   Michael Brock, President

   Peter E. Burton, Executive Director

   Robert Mason, Member

   Lincoln North, Member; Past President, Appraisal Institute of Canada

   R.S. Onyschuk, Counsel

Wednesday, 22 February 1984
(Morning Session)

10:00 a.m.

1. The Canadian Bankers' Association (Exhibits 26, 51 and 53)
   Robert M. MacIntosh, President

   Robert W. Korthals, Chairman of Executive Council; President, Toronto Dominion Bank

   A.L. Reid, Chairman, Financial Institutions Committee; Manager, Interbank Operations, Royal Bank of Canada

Thursday, 23 February 1984
(Morning Session)

10:00 a.m.

1. Review of Written Submissions

(Afternoon Session)

2:00 p.m.

1. Review of Written Submissions
2. Consideration of Draft Report

Tuesday, 28 February 1984
(Morning Session)

10:00 a.m.

1. Consideration of Draft Report

(Afternoon Session)

2:00 p.m.

1. Consideration of Draft Report

Wednesday, 29 February 1984
(Morning Session)

10:00 a.m.

1. The Investment Funds Institute of Canada (Exhibit 40)
   Keith Douglas, President

   Robert Brewerton, Executive Vice-President, Sterling Trust Company

   Douglas Pittet, Legal Counsel

Wednesday, 29 February 1984
(Morning Session)

10:00 a.m. 2. Consideration of Draft Report

(Afternoon Session)

2:00 p.m. 1. Consideration of Draft Report

Thursday, 1 March 1984
(Morning Session)

10:00 a.m. 1. Consideration of Draft Report

(Afternoon Session)

2:00 p.m. 1. Consideration of Draft Report

Thursday, 8 March 1984
(Morning Session)

10:00 a.m. 1. Consideration of Draft Report

Thursday, 5 April 1984
(Afternoon Session)

4:00 p.m. 1. Consideration of Draft Report

Wednesday, 11 April 1984
(Morning Session)

10:00 a.m. 1. Consideration of Draft Report

Thursday, 12 April 1984
(Afternoon Session)

3:30 p.m. 1. Consideration of Draft Report

Wednesday, 18 April 1984
(Morning Session)

10:00 a.m. 1. Consideration of Draft Report

Wednesday, 25 April 1984
(Morning Session)

10:00 a.m. 1. Consideration of Draft Report

Wednesday, 2 May 1984
(Morning Session)

10:00 a.m. 1. Consideration of Draft Report